

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

OCT 12 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments, FM Broadcast)
Stations (Littlefield, Wolfforth)
and Tahoka, Texas))

MM Docket
No. 95-83

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch

OPPOSITION TO MOTION TO DISMISS
REPLY COMMENTS

Pursuant to Section 1.45(a) of the Commission's rules, Lee W. Shubert, Trustee, the licensee of KLLL(FM), Lubbock, Texas ("KLLL"), respectfully files this opposition to petitioner's motion to dismiss KLLL's reply comments.

KLLL filed its reply comments on August 25, 1995, in accordance with the deadline set for reply comments in the Commission's Notice of Proposed Rulemaking ("Notice"). 10 FCC Rcd 6598 (1995). A full month later, petitioner filed the instant motion, asserting that KLLL's reply comments were untimely. Nothing in the Commission's Notice, its rules, or its prior decisions supports petitioner's argument. The Notice did require petitioner to file comments in the opening round, supporting its proposal. Notice Appendix ¶ 2. As petitioner

No. of Copies rec'd 4
LSIABODE

concedes,^{1/} KLLL's reply comments were a response to those comments -- more specifically, a rebuttal to petitioner's assertions concerning Wolfforth's independence and the relative need of Wolfforth and Littlefield for FM service. KLLL also responded to the comments filed by Emil Macha in support of petitioner's proposal. Thus, KLLL's comments were clearly filed "in reply to the original comments" filed by petitioner and Mr. Macha, as provided in the rule petitioner cites. See 47 C.F.R. § 1.415(c). Apart from the requirement that petitioner file its comments in the opening round, the only restriction in the Commission's Notice or its rules or decisions concerning reply comments is the long established requirement that counterproposals be filed in the opening round.^{2/} That requirement is clearly inapplicable here, since KLLL has made no counterproposal. To foreclose timely filed reply comments that obviously "reply" to "comments," without providing any prior notice to interested parties, would be the height of arbitrary agency action.

Apparently, petitioner's argument is that there was nothing for KLLL to reply to, because all petitioner did in its comments was to provide a verified copy of its rulemaking petition and reaffirm its interest in the channel. This argument

^{1/} Motion at 1 (reply comments "addressed issues raised by Petitioner").

^{2/} Notice Appendix ¶ 3(a); Amendment of Section 73.202 (Lyons, Kansas et al.), 5 R.R.2d 1530 (1965).

ignores the comments filed by Mr. Macha. But in any event, as noted above, it also ignores the requirement in the Notice that petitioner file opening round comments. Petitioner did so by electing to refile its earlier petition. While that was certainly its prerogative under the procedures specified in the Notice, doing so did not serve to cut off KLLL's right under the Notice to reply either to Mr. Macha or to what petitioner also chose to file as its comments. Petitioner's hysterical talk about "abuse of process" appears to have little to do with the requirements of Commission rules, and everything to do with KLLL's demonstration that -- as Wolfforth officials themselves have recognized -- Wolfforth has no real need for this proposed Lubbock move-in by a Littlefield permittee with no apparent interest in satisfying the terms of its construction permit.

For the reasons stated above, petitioner's motion should be denied.^{3/}

Respectfully submitted,

LEE W. SHUBERT, TRUSTEE


William R. Richardson, Jr.

Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6038

Its Attorney

October 12, 1995

^{3/} Somewhat belatedly, petitioner now seeks an opportunity to respond to KLLL's reply comments. In the event the Commission does not reject this request as untimely, KLLL requests the opportunity to file a reply to any new factual materials contained in any such response.

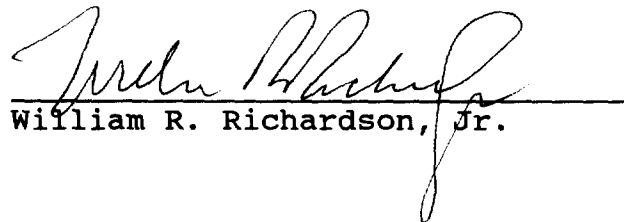
CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., hereby certify that on this 12th day of October, 1995, I caused to be delivered by first class mail, postage prepaid, copies of the foregoing Opposition to Motion to Dismiss Reply Comments, to the following, at the addresses listed below:

James L. Primm
21st Century Radio Ventures, Inc.
713 Broadway
Santa Monica, CA 90401

*John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 8322
Washington, D.C. 20554

*Pam Blumenthal
Allocations Branch
Federal Communications Commission
2025 M Street, NW
Room 8308
Washington, D.C. 20554


William R. Richardson, Jr.

* By hand